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Attacked by cranks, self-styled patriots
and even fellow lawyers—
his family threatened—James B. Donovan
lived up to his professional principles

He defended a Soviet spy

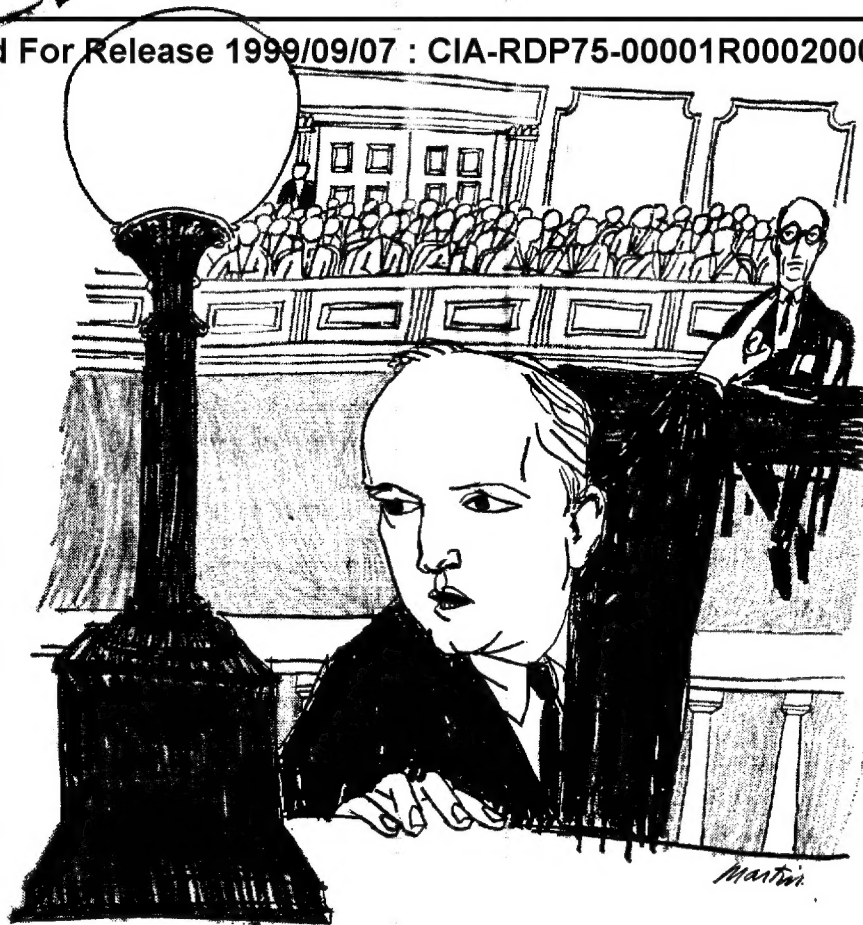
BY BARD LINDEMAN

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AT 7 A.M. on June 21, 1957, three F.B.I. agents, led by Special Agent Edward F. Gamber, pushed into Room 839 of the Hotel Latham in New York City and surprised Col. Rudolf Ivanovich Abel lying on top of the bed sheets. "Colonel," said Gamber, "we have information concerning you, involving espionage." ■ This was the dramatic beginning of a classic spy story of our time. It also marked the first peacetime prosecution by a civilian court of an alien spy, the highest-ranking, most dangerous Soviet intelligence agent ever captured in the U. S. Could a colonel in the Soviet Secret Police, sent to steal atomic

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and military secrets, find a capable American defense lawyer and receive a fair trial? "It wasn't so much the trial of Colonel Abel, as it was the trial of the American bar," said Justice Miles McDonald of Brooklyn Supreme Court. "Not since John Adams defended the British soldiers for the Boston Massacre in 1770, would a defense lawyer take on a less popular client." ■ The tall, balding, 55-year-old Russian asked the court, in flawless English, to assign him counsel. The Brooklyn Bar Association began a search for a capable lawyer. There were no volunteers. "We wanted all the world to know the man we chose was a man of

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character and ability and that his loyalty was beyond question," said Raymond Reisler, Brooklyn Bar president. "When someone hit upon Jim Donovan's name, we knew he was our man."

James B. Donovan, 44, a stocky, white-haired New York trial lawyer, was a Naval intelligence officer in World War II and a member of the late Supreme Court Justice Robert H. Jackson's prosecution team at the Nuremberg war crimes trials.

"When I told my wife I'd been asked to defend a Red spy, she screamed," recalled Donovan. "I talked to everyone I met about it. Most said 'Why should anyone defend him?'" Jim Donovan would have to live with that question.

"Every man is entitled to a fair trial and the right of counsel," he begins. "Even a man coming here to plan our destruction, if that's what it was, should get the best possible defense lawyer."

No authority could have forced the lawyer to accept the assignment. After a day of deliberation, he decided to take on the case on one condition: that it be a public service.

Agent Abel, who had entered the country illegally in 1948, was charged nine years later with the capital crime of conspiracy to commit espionage.

In addition to hollowed-out coins and other miniature containers for carrying messages, F.B.I. agents found in the Russian's Brooklyn studio a short-wave radio, microfilm and maps of major U. S. cities. Cash

time of his arrest. He had lived as "Emil R. Goldfus," a struggling artist who painted scenes of Bowery life, and was fond of reading Hemingway, Tolstoi and Victor Hugo.

"If the allegations are true," Donovan said, "it seems that instead of dealing with Americans who betrayed their country, we are dealing with a Russian citizen, in a quasi-military capacity, who has served his country on an extraordinarily dangerous mission. As an American I would hope that my government has similar men on similar missions in many countries of the world."

The fact that Donovan is a devout Roman Catholic, a commander in the Naval Reserve and an American Legion post commander, was never discussed between the two men when they met for the first time.

FROM THE START, we had no differences," Donovan said. "I called him 'Rudolf' and he called me 'Mr. Donovan.' He was an intellectual, a gentleman and he had a fine sense of humor. I found him fascinating and, as a man, you couldn't help but like him. He looked like a schoolmaster and he could easily have assumed the role. He spoke English and five other languages. He was an engineer, he knew photography, electronics, nuclear physics and, of course, he posed successfully as an artist. He also played the classical guitar and kidded me that Elvis Presley was no musician; he was simply a 'strummer.'"

It wasn't long before vindictive personal attacks upon the lawyer and his family began.

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steady stream of crank letters and threatening phone calls. Finally, Donovan ordered the phone cut off.

"I told the local precinct police we were being bothered," says Donovan, "but they couldn't monitor the phone simply because some drunks wanted to call up and blaspheme me as a Commie-lover."

If Donovan was prepared for the attacks from outside his profession, he was unprepared for the taunts from inside the bar. "One day a lawyer I knew said to me, 'Here comes the million-dollar Commie lawyer.'"

Without raising his voice, Donovan replied, "Counselor, that remark is as valid as most of your legal opinions."

"At a bar meeting," recalls Donovan, "I was asked by a fellow Catholic if my sense of guilt wasn't overwhelming. These people should understand that for a lawyer to become deeply and personally involved is just vanity. It's an exaggeration of the importance of the individual lawyer's role. He doesn't determine the outcome of a case. You have a judge and jury for this."

Jim Donovan was born in a comfortable old residential section of the Bronx. His father was a prominent New York doctor. Today Donovan's home is a 15-room duplex apartment overlooking Prospect Park. The lawyer is an omnivorous reader and a collector of rare books.

Preparing for the trial, Donovan pushed his own practice—mostly insurance law—into the background. For three months he worked on nothing but the Abel defense. "The number of hours I spent on it was

fantastic," he says. "I saw Abel a hundred times in those months."

At the end of each day, the lawyer set aside a half-hour for keeping a personal diary on the case. Much of it is devoted to Abel and a record of conversations the two men had, which ranged over art, literature, book collecting and trial strategy.

"This is a classic case," the lawyer wrote one night, "and it demands a classic defense."

"I was working against the Justice Department and the F.B.I.," says Donovan. "I felt I couldn't afford a single mistake, for it might cost the colonel his life. I had the uneasy feeling that if this happened, someone would point out that it was a former U. S. Naval intelligence officer who sent a Russian intelligence colonel to the electric chair."

On Monday, October 14, 1957, the testimony began in Federal Court, Brooklyn, before a jury of nine men and three women. The grimy Gothic towers, which stand like sentinels at the corners of the 68-year-old building, looked across to 252 Fulton Street, where Abel had quietly carried on espionage from his \$35-a-month studio.

World-wide attention focused on the courtroom. Only the Soviet press had chosen to ignore the trial. Mention of it finally in *Literaturnaya Gazeta* broke a five-month silence and branded the case as a hoax and low-brow crime fiction concocted by F.B.I. Chief J. Edgar Hoover.

Abel took his seat at the defense table with Donovan and two young court-appointed assistants, Thomas M. Debevoise II, and Arnold G.

Fraiman. Brooklyn Federal Court Judge Mortimer W. Byers, 80, and since retired, called for order in the court. Tension bristled. "People seemed to be on the edge of their seats waiting for a knockout," says Donovan. "When I stood up to make my first objection, I felt as if I were all alone."

Donovan produced no witnesses; and with the death penalty hanging over him, Abel chose not to take the stand and subject himself to intense questioning by the prosecution. Donovan ripped into the credibility of the Government's two key witnesses: Reino Hayhanen, the loud-talking, hard-drinking Russian agent who betrayed Abel, and Roy A. Rhodes, a U. S. Army master sergeant, who confessed during the trial that he had sold the Russians information while serving at the American Embassy in Moscow.

In his summation, Donovan paid particular attention to why Abel should receive a vigorous defense and a fair trial. "Our principles are engraved in the history and the law of this land," he said. "If the free world is not faithful to its own moral code, there remains no society for which others may hunger."

When the jury, after three and a half hours, reached a verdict of guilty, reporters rushed Abel. Had it been a fair trial? The colonel's answer was a penciled message, which was signed "R. I. Abel" and read:

"I would like to take this opportunity of expressing my appreciation of the way in which my court-appointed attorneys conducted my defense. I wish to express my thanks

for the tremendous amount of work they put into their efforts on my behalf and for the skill and ability they have shown in doing so."

The Christian Science Monitor called the trial "proof of the maturity of the system of due process of law and its capabilities to deal on its own terms with representatives of the system which seeks to destroy it."

On November 15, Abel was brought back to court for sentencing. Before Judge Byers imposed a 30-year prison term on the spy and fined him \$3,000, Donovan stepped forward and made a dispassionate plea that Abel's life be spared. He emphasized that the death penalty would eliminate the possibility of Abel's ever "cooperating" and would preclude any possibility of exchanging him for an American of equal rank, should a U. S. intelligence officer fall into Russian hands.

The logic of Donovan's plea was recalled last May when the Russians dramatically announced the capture of the U-2 flier Francis Gary Powers.

On August 7, 1958, Abel's appeal reached the U. S. Supreme Court. Donovan claimed Abel's Constitutional rights had been violated when F.B.I. agents, along with Immigration and Naturalization Service men, searched the colonel without a warrant. Following the arrest, Abel was secretly flown to an alien detention camp at McAllen, Texas. Six weeks later, he was returned to Brooklyn and indicted as a spy.

"The Fourth Amendment, which says a man's home is his castle, was clearly violated," the lawyer said. "They searched his room and at

rested him on the strength of a civil alien detention writ. Similar writs, called writs of assistance, were used by the British in the 1760s to harass Americans. John Adams said that when James Otis, the great Boston lawyer, denounced these writs, 'American independence was then and there born.'

"This was the first time the U.S. Supreme Court had to rule on secret espionage by an alien and our whole system, the maturity of American justice, was being tested here," Donovan declared. "The Constitutional issues have nothing to do with whether Abel really was a Soviet spy. At issue were the rights of us all."

At dinner recently, a friend abused the lawyer because he had spent hundreds of hours on Abel's defense--time, the friend said, he could have been devoting to something worthwhile, "like the legal problems of American businessmen."

"Some night this fellow will be arrested for drunken driving," says Donovan. "He'll scream then for the best lawyer in the county to defend him and he'll demand every Constitutional right to which he's entitled. These people never think about rights and privileges until they personally feel the need of them."

On February 24, 1959, Donovan argued the appeal before the U. S. Supreme Court. "As I walked up the steps of the court," the lawyer said, "I looked up at the inscription, 'Equal Justice Under Law.' 'This is why I'm here,' I said to myself. 'This is all I'm asking for.'"

In his plea, Donovan attacked the

contentions of the Justice Department, saying it had devised a scheme whereby it could abuse deportation power to seize evidence that could be used later to indict a man on criminal charges. The lawyer said the Abel case posed a challenge: civil liberties vs. internal security.

On March 28, 1960, the Supreme Court upheld Abel's conviction. The 5-4 decision and the filing of two dissenting opinions, by Justice William O. Douglas and William J. Brennan Jr., indicated how deeply divided the court was on the Constitutional issue raised by the spy's lawyer. Chief Justice Earl Warren paid Donovan the highest praise. "I think I can say that in my time on this court no man has undertaken a more arduous, more self-sacrificing task," he said.

Donovan made one last try, appealing to the court for reargument. This was refused on May 16 and, after nearly three years, the case was closed. Lawyers assert the defense figuratively cost Donovan \$250,000, a fee he might have earned had Abel been president of a U.S. business corporation. As it was, the court approved a fee of \$10,000 and the lawyer donated the money, sent through East Germany by the spy's wife, to Fordham University, Columbia and Harvard Law Schools.

"I don't want to sound like a martyr," says Donovan, "but the whole thing turned out to be more like a career than a case. The fact that Abel received due process every step of the way was, I believe, exceptional. It was a triumph for the individual and to the United States."

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Your child's
future may
be imperiled by
the serious
shortage of
these specialists—
the newest in
our educational
system

We need 20,000 guidance counselors

BY THEODORE IRWIN

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IN A LOS ANGELES high school, a 16-year-old girl attacks a
classmate with a knife for flirting with her boy friend.
In Cleveland, a high school senior with a "C" average insists
on applying for admission to Princeton. In Minneapolis, a
boy is about to quit school for a job in a supermarket al-
though ability tests show he could be a good engineer.
Elsewhere, a confused girl wants to know what high school
courses to take to prepare her for a career in advertising,
a shy youngster says, "I can't get along with the other kids,"
and parents worry about their child because he has no idea
what to do after graduation. All these problem students
turn to the guidance counselor—if the school is lucky.